

(ii) Inspect the routing of microswitch electrical harness “53K” for correct installation by following paragraph 3.B.2.e. of ASB AS350–67.00.43. If the wiring routing is incorrect, before further flight, correct the wiring routing by following paragraph 3.B.2.f. of ASB AS350–67.00.43.

(6) For helicopters with optional Autopilot “81K” and without MOD 073222 installed:

(i) Position relay “81K” on frame X1310 by following paragraph 3.B.2.h. of ASB AS350–67.00.43.

(ii) Inspect the routing of microswitch electrical harness “53K” for correct installation by following ASB AS350–67.00.43, step 3.B.2.e. If the wiring routing is incorrect, before further flight, correct the wiring routing by following paragraph 3.B.2.f. of ASB AS350–67.00.43.

#### (f) Special Flight Permits

Special flight permits are prohibited.

#### (g) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Rotorcraft Standards Branch, FAA, may approve AMOCs for this AD. Send your proposal to: George Schwab, Aviation Safety Engineer, Safety Management Section, Rotorcraft Standards Branch, FAA, 10101 Hillwood Pkwy., Fort Worth, TX 76177; telephone 817–222–5110; email 9-ASW-FTW-AMOC-Requests@faa.gov.

(2) For operations conducted under a 14 CFR part 119 operating certificate or under 14 CFR part 91, subpart K, the FAA suggests that you notify your principal inspector, or lacking a principal inspector, the manager of the local flight standards district office or certificate holding district office before operating any aircraft complying with this AD through an AMOC.

#### (h) Additional Information

(1) Eurocopter Alert Service Bulletin No. 05.00.49, Revision 3, dated March 8, 2012, which is not incorporated by reference, contains additional information about the subject of this AD. For service information identified in this AD, contact Airbus Helicopters, 2701 N. Forum Drive, Grand Prairie, TX 75052; telephone 972–641–0000 or 800–232–0323; fax 972–641–3775; or at <https://www.airbus.com/helicopters/services/technical-support.html>. You may view the referenced service information at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Pkwy., Room 6N–321, Fort Worth, TX 76177.

(2) The subject of this AD is addressed in European Aviation Safety Agency (now European Union Aviation Safety Agency) (EASA) AD No. 2017–0035, dated February 20, 2017. You may view the EASA AD on the internet at <https://www.regulations.gov> in the AD Docket.

#### (i) Subject

Joint Aircraft Service Component (JASC) Code: 7697, Engine Control System Wiring.

Issued on October 6, 2020.

**Lance T. Gant,**

Director, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2020–22744 Filed 10–14–20; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF COMMERCE

### Office of the Under Secretary for Economic Affairs

#### 15 CFR Part 1500

[Docket No.: 200901–0230]

RIN 0605–AA56

### Concrete Masonry Products Research, Education and Promotion Order; Referendum Procedures

**AGENCY:** Under Secretary for Economic Affairs, United States Department of Commerce.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** Pursuant to the Concrete Masonry Products Research, Education, and Promotion Act of 2018 (the Act), the Department of Commerce (Department) solicits comments on proposed procedures for conducting a referendum to determine whether manufacturers of concrete masonry units favor the issuance of a proposed Concrete Masonry Products Research, Education, and Promotion Order (proposed order). The purpose of the proposed order is to strengthen the position of the concrete masonry products industry in the domestic marketplace; maintain, develop, and expand markets and uses for concrete masonry products in the domestic marketplace; and promote the use of concrete masonry products in construction and building. The Department published the proposed order in the **Federal Register** on August 24, 2020. The Act requires industry to approve the proposed order via a referendum. If industry approves the proposed order, the Secretary of Commerce (Secretary) will issue a final order and appoint a Board to carry out the duties prescribed by that order, which would include an industry-funded research, education, and promotion program. The Department also would follow these procedures for any subsequent referendum under the Act. This proposal also announces the intent of the Department to request approval by the Office of Management and Budget (OMB) of two new information collection requests (ICRs) to support implementation of the referendum.

**DATES:** The Department must receive comments November 16, 2020.

**ADDRESSES:** Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to

<https://beta.regulations.gov/docket/DOC-2020-0003> click the “Comment Now!” icon, complete the required fields, and enter or attach your

comments. The supporting economic analysis is also available for comment on [regulations.gov](https://www.regulations.gov).

All submissions, including attachments and other supporting materials, will become part of the public record and subject to public disclosure. The Department reserves the right to publish relevant comments, unedited and in their entirety. Do not include personal information, such as account numbers or Social Security numbers, or names of other individuals. Do not submit confidential business information, or otherwise proprietary, sensitive or protected information. We will not post or consider comments that contain profanity, vulgarity, threats, or other inappropriate language or like content.

Pursuant to the Paperwork Reduction Act (PRA), send to the above address comments regarding the accuracy of the burden estimate, ways to minimize the burden, including the use of automated collection techniques or other forms of information technology, or any other aspect of this collection of information. In addition, send comments concerning the information collection to [OIRA\\_Submission@omb.eop.gov](mailto:OIRA_Submission@omb.eop.gov) or online at <https://www.reginfo.gov/public/do/PRAMain>.

**FOR FURTHER INFORMATION CONTACT:** Mr. Michael Thompson, Communications for the Commerce Checkoff Implementation Program, Office of the Under Secretary for Economic Affairs, telephone: (202) 482–0671 or via electronic mail: [mthompson1@doc.gov](mailto:mthompson1@doc.gov).

#### I. Legal Background

Pursuant to the Concrete Masonry Products Research, Education, and Promotion Act of 2018, 15 U.S.C. 8701 *et seq.*, the Department is enacting a research, education, and promotion program (commonly referred to as a checkoff program) for concrete masonry products. The Act specifically authorizes the Secretary to conduct the referendum, and states that “[referenda . . . shall be conducted in a manner determined by the Secretary.” 15 U.S.C. 8706(c)(1). The Act also authorizes the Secretary to “issue such regulations as may be necessary to carry out [the Act] and the power vested in the Secretary under [the Act].” 15 U.S.C. 8713.

The Department’s actions to bring the program to fruition will include: (1) implementing an order that will effectuate the purpose of the Act; (2) conducting a referendum among the industry to determine whether the industry approves of being subject to the implementing order; and, upon an affirmative vote on the order, (3) issuing

the order and establishing a Board that will carry out the provisions of the order; and (4) performing continuing oversight of the Board and program. An industry group, the *CMU Checkoff Initiative*, submitted a proposed order to the Secretary on April 15, 2020. The proposed order was made available for comment in a separate proposed rule published in the **Federal Register** on August 24, 2020, at 85 FR 52059.<sup>1</sup>

Under the Act, the Secretary must conduct the referendum among eligible manufacturers during the 60-day period before the proposed order becomes effective. 15 U.S.C. 8706(a)(1). The Department interprets this to mean that the referendum would be conducted entirely within the 60-day period preceding the effective date of the order, but specifically requests comments on this interpretation. The order shall become effective only if the Secretary determines that the order has been approved by a majority “yes” vote by both: (1) The total number of concrete masonry unit manufacturers voting; and (2) manufacturers who operate a majority of the machine cavities operated by the manufacturers voting in the referendum. 15 U.S.C. 8706(a)(2).

A manufacturer will be considered eligible to vote if the manufacturer has manufactured concrete masonry products during a period of at least 180 days prior to the first day of the 30-day period during which voting in the referendum will occur. 15 U.S.C. 8706(b)(2). The Act directs the Secretary to conduct the referendum “among [eligible] manufacturers . . . subject to assessments under section 8705 of this title.” As explained below, only manufacturers of concrete masonry units are subject to assessment under the Act.

The Act and the proposed order distinguish between concrete masonry products and concrete masonry units. The Act defines concrete masonry products to include a broader category of products, including concrete masonry units, as well as hardscape products such as concrete pavers and segmental retaining wall units, manufactured on a block machine using dry-cast concrete. Concrete masonry units are a type of concrete masonry product with an actual width of 3 inches or greater that are manufactured from dry-cast concrete using a block machine, including concrete block and related concrete units used in masonry applications. Under the Act and the proposed order, only manufacturers of concrete masonry

units are required to pay an initial rate of assessment of \$0.01 per concrete masonry unit sold. 15 U.S.C. 8705(c)(1).

The Act does not define the phrase “subject to assessment” and therefore, the Secretary must interpret the statute to determine whether all manufacturers of concrete masonry products should participate in the referendum, or whether only manufacturers of concrete masonry units should participate. The phrase “subject to assessment” could mean: (1) Meeting only the eligibility requirement described above (that is, having manufactured concrete masonry products during the 180-day period prior to voting), or (2) both meeting the eligibility requirement and being subject to the initial rate of assessment. Under interpretation (1), the referendum would be conducted among all manufacturers who had manufactured concrete masonry products during the 180-day period prior to voting. Under interpretation (2), because the initial rate of assessment is applied only to concrete masonry units sold, the referendum would be conducted among all manufacturers who had manufactured concrete masonry units during the 180-day period prior to voting.

Where a statute leaves a gap or is ambiguous, courts will typically look to see whether the agency’s interpretation was reasonable in light of the text, nature, and purpose of the statute. *See, e.g., Cuozzo Speed Techs., LLC v. Lee*, 136 S. Ct. 2131, 2134 (U.S. June 20, 2016). In the absence of a statutory definition, courts “construe a statutory term in accordance with its ordinary or natural meaning.” *FDIC v. Meyer*, 510 U.S. 471, 476 (1994). The most relevant definition of “subject to” is “affected by or possibly affected by” something.<sup>2</sup> Only manufacturers of concrete masonry units will actually have to pay, or be affected by, the initial rate of assessment. The Department believes, therefore, that the most natural reading of the statute is that only concrete masonry unit manufacturers are “subject to” assessment and therefore eligible to participate in the referendum.

This reading is also consistent with the stated purpose of the Act as described in 15 U.S.C. 8701. Senate Report 115–218 includes the Congressional Budget Office’s (CBO) estimate concerning the Act’s impacts, and notes the following assumption:

The bill [S. 374] would apply to producers of both concrete block and concrete pavers,

but CBO expects that only producers of concrete block would participate in the referendum. Because there is little differentiation among concrete blocks across manufacturers, all producers of concrete blocks would benefit from an industry-wide research and promotion program.

Manufacturers of concrete pavers, on the other hand, are able to distinguish their products in ways that allow consumers to recognize individual brands. Consequently, those producers have little incentive to participate in an industry-wide marketing effort. Based on information from manufacturers of concrete pavers, CBO expects that those producers would not participate in the referendum.

Senate Report 115–218, at 4 (Mar. 22, 2018).

Based upon both the language and the overarching purpose of the statute, and because concrete masonry unit manufacturers are currently the only manufacturers who have an incentive to participate in this program, the Department interprets the Act to mean that only manufacturers subject to the initial rate of assessment are “subject to assessment,” in accordance with interpretation (2). Therefore, for the initial referendum, an eligible manufacturer would be a manufacturer of concrete masonry units that is subject to the initial rate of assessment, that is, \$0.01 per concrete masonry unit sold by a manufacturer. *See* 15 U.S.C. 8705(c)(1).

## II. Summary of Proposed Rule

The Department would conduct the referendum. Each manufacturer eligible to vote in the referendum would be entitled to one vote. *See* 15 U.S.C. 8706(b)(1). For the order to go into effect, there must be a majority “yes” vote by both: (1) The total number of concrete masonry unit manufacturers voting; and (2) manufacturers who operate a majority of the machine cavities operated by the manufacturers voting in the referendum. *See* 15 U.S.C. 8706(a)(2). Manufacturers would be required to register by midnight of the day prior to the start of the referendum period in order to vote. *See* 15 U.S.C. 8706(c)(2). The Department would use Employer Identification Numbers to identify unique manufacturers.

The referendum would be conducted by an agent, who would determine the referendum period and would provide notification to interested voters to allow them to register prior to the referendum period, as required by the Act. *See* 15 U.S.C. 8706(c)(2). The agent would provide registration forms and ballots to eligible voters and would provide reasonable public notice of the referendum. *See* 15 U.S.C. 8706(c)(4). The agent would also collect and review

<sup>1</sup> <https://www.federalregister.gov/documents/2020/08/24/2020-17515/concrete-masonry-products-research-education-and-promotion-order>.

<sup>2</sup> “Subject to.” *Merriam-Webster.com Dictionary*, Merriam-Webster, <https://www.merriam-webster.com/dictionary/subject%20to>. Accessed 20 Jun. 2020.

all ballots and determine whether any ballots are invalid and should not be counted. Finally, the agent would prepare a report on the referendum and announce the results to the public. The Department would use these same procedures for any subsequent referendum under the Act. For any new proposed order, voter eligibility would be based on the scope of such proposed order.

III. Request for Comments

The Department invites comments on these procedures for conducting the referendum to determine whether manufacturers of concrete masonry units favor issuance of the proposed order.

Classification

Executive Order 12866

This rulemaking is not a significant regulatory action under Executive Order 12866.

Executive Order 13771

This rule is not subject to the requirements of Executive Order 13771, because its likely impact is *de minimis*.

Executive Order 13132

This proposed rule does not contain policies with Federalism implications as defined in Executive Order 13132.

Regulatory Flexibility Act: Initial Regulatory Flexibility Analysis

The Regulatory Flexibility Act (RFA), first enacted in 1980 and codified at 5 U.S.C. 600–611, was intended to place the burden on the government to review all new regulations to ensure that, while accomplishing their intended purposes,

they do not unduly inhibit the ability of small entities to compete. The RFA recognizes that the size of a business, unit of government, or nonprofit organization can have a bearing on its ability to comply with Federal regulations. Major goals of the RFA are: (1) To increase agency awareness and understanding of the impact of their regulations on small business; (2) to require that agencies communicate and explain their findings to the public; and (3) to encourage agencies to use flexibility and to provide regulatory relief to small entities.

The RFA emphasizes predicting significant adverse impacts on small entities as a group distinct from other entities and on the consideration of alternatives that may minimize the impacts, while still achieving the stated objective of the action. When an agency publishes a proposed regulatory action, it must either: (1) Certify that the action will not have a significant adverse impact on a substantial number of small entities, and support such a certification declaration with a factual basis, demonstrating this outcome, or, (2) if such a certification cannot be supported by a factual basis, prepare and make available for public review an Initial Regulatory Flexibility Analysis (IRFA) that describes the impact of the proposed rule on small entities.

The IRFA for the proposed referendum procedures follows below.

Basis and Purpose of the Rule

This action is taken under the authority of the Act, which authorizes a research, education, and promotion program for concrete masonry products, also known as a checkoff program. The

checkoff program would be established by an order issued by the Secretary that is subject to approval by an industry referendum. The program would then be carried out by a Board, which would develop research and education programs as well as efforts to promote concrete masonry products in domestic markets. Board activities would be funded by assessments on manufacturers of concrete masonry products, based on the number of masonry units sold each quarter. A proposed order submitted by industry to the Department on April 15, 2020, triggered a referendum deadline of approximately 8 months from submission. The objectives of, and legal basis for, the proposed rule is discussed earlier in the preamble and are not repeated here.

Number of Affected Entities

The proposed order applies to products manufactured on concrete block machines and used for construction. As indicated by the data below and confirmed by industry experts, the industry is dominated by small entities.

The U.S. Small Business Administration size standard to qualify as a small business in this industry is 500 or fewer employees.<sup>3</sup> According to Census data, there were 430 firms and 686 establishments engaged in concrete block and brick manufacturing in 2017.<sup>4</sup> Of these, 401 firms, or 93 percent, employed fewer than 500 employees, and these small firms accounted for 514 establishments, or 75 percent of all establishments, and about 62 percent of industry employment.<sup>5</sup>

TABLE 3—BLOCK AND BRICK MANUFACTURERS 2017 BY BUSINESS SIZE

Size of business by number of employees	Number of firms	Number of establishments	Employment	Estimated receipts (\$mils)	Annual payroll (\$mils)
Total .....	430	686	16,575	4,682	814
0–4 .....	92	92	173	56	9
5–9 .....	66	66	432	97	19
10–19 .....	83	87	1,168	277	56
20–99 .....	116	152	3,851	922	185
100–499 .....	44	117	4,607	1,506	251
500+ .....	29	172	6,344	1,823	293

Source: U.S. Census Bureau 2017 County Business Patterns and 2017 Economic Census, Table US\_6dignatnaics\_2017, released 01/06/2020.

<sup>3</sup> See “Table of Small Business Size Standards Matched to North American Industry Classification System Codes” on the U.S. Small Business Administration website.

<sup>4</sup> A firm is a business organization consisting of one or more domestic establishments in the same

state and industry that were specified under common ownership or control and an establishment is a single physical location at which business is conducted or services or industrial operations are performed. See “Statistics of U.S. Businesses Glossary” on the U.S. Census Bureau website.

<sup>5</sup> See “2017 SUBS Annual Data Tables by Establishment Industry” on the U.S. Census Bureau website. For more information, see the County Business Patterns methodology on the Census website.

### Costs to Affected Entities

This action would impose a reporting burden on eligible manufacturers of concrete masonry units. To participate in the referendum, eligible manufacturers would register with the Department in advance of the referendum period. Eligible manufacturers would have the opportunity to complete and submit a ballot to the Department indicating whether or not they favor implementation of the proposed order. The specific burdens for registration and the ballot are detailed later in this document in the section titled “Paperwork Reduction Act”.

The Department estimates that the respondent burden of the referendum is 0.5 hours for registration and 0.25 hours to complete the ballot and that approximately 690 small businesses will be affected. This results in a total estimated burden on small businesses of 517.5 hours. According to the Bureau of Labor Statistics, the median pay for industrial production managers is \$50.71 per hour.<sup>6</sup> Thus, the Department estimates that the cost to firms of participating in the referendum will average \$38.03.

### Paperwork Reduction Act

The information collection requests (“ICRs”) in these proposed referendum procedures have been submitted for approval to OMB under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.* This section describes the new ICRs and the estimated time to fulfill each requirement. There are two new ICRs associated with the proposed referendum procedures—one dealing with the voter registration process and a second with the ballot that voters will use during the referendum.

(1) Registration. The Act requires manufacturers who wish to participate in the referendum to register in advance of the referendum period. The Secretary will need adequate information from all interested voters to determine whether they are eligible to participate in the referendum. The Department will restrict the information request to that information needed to ensure eligibility of the requester to participate in the referendum. Types of information will include name, contact information (address, phone number, email), status as a manufacturer of concrete masonry units, affirmation of having manufactured concrete masonry units within 180 days prior to the beginning of the referendum period, the number of

cavities in operation, their Employer Identification Number, and similar identifying information.

*Estimated burden:* 0.5 hour per application.

*Respondents:* Manufacturers of concrete masonry units.

*Estimated Number of Respondents:* 690.

*Estimated Number of Responses per Respondent:* 1.

*Estimated Total Annual Burden on Respondents:* 345 hours.

(2) Ballot. To conduct a referendum the Department will issue ballots to allow eligible voters to participate. The ballot shall provide for recording essential information, including that needed for ascertaining whether the person voting, or on whose behalf the vote is cast, is an eligible voter. The Department will restrict the information request to that information needed to determine a voter’s eligibility. Information will include the name and address of the manufacturer, status as a manufacturer of concrete masonry units, affirmation that they have manufactured concrete masonry units within 180 days of the beginning of the referendum period, manufacturer Employer Identification Number, the number of cavities the manufacturer has in operation, and similar verification information.

*Estimated Burden:* 0.25 hour per ballot.

*Respondents:* Manufacturers of concrete masonry units.

*Estimated Number of Respondents:* 690.

*Estimated Number of Responses per Respondent:* 1.

*Estimated Total Annual Burden on Respondents:* 172.5 hours.

As part of its continuing effort to reduce paperwork and respondent burden, the Department invites the general public and other Federal agencies to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act. The Department solicits comments concerning: Whether these ICRs are necessary for the proper performance of the functions of the Department, including whether the information has practical utility; the accuracy of the Department’s estimates of the burden of the ICRs; the quality, utility, and clarity of the information to be collected; and whether the burden of collection of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology, may be minimized. The information collection request may be viewed on the *Reginfo.gov* website. Organizations and

individuals desiring to submit comments on the collection of information requirements should see the **ADDRESSES** section of this notice. The final rule will respond to any public comments on the ICRs contained in this proposal. Notwithstanding any other provision of the law, no person is required to respond to, and no person will be subject to penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB control number.

### National Environmental Policy Act

This proposed rule will not significantly affect the quality of the human environment. Therefore, an environmental assessment or Environmental Impact Statement is not required to be prepared under the National Environmental Policy Act of 1969.

### List of Subjects in 15 CFR Part 1500

Administrative practice and procedure, Advertising, Consumer information, Marketing agreements, Concrete masonry promotion, Reporting and recordkeeping requirements.

For the reasons stated in the preamble, the Under Secretary for Economic Affairs proposes to amend 15 CFR part 1500, proposed to be added August 24, 2020, at 85 FR 52059, as set forth below:

### PART 1500—CONCRETE MASONRY RESEARCH, EDUCATION, AND PROMOTION

■ 1. The authority citation for part 1500 continues to read as follows:

**Authority:** 15 U.S.C. 8701–8717.

■ 2. Add subpart B to read as follows:

#### Subpart B—Referendum Procedures

Sec.

1500.100	General.
1500.101	Definitions.
1500.102	Voting.
1500.103	Instructions.
1500.104	Agents.
1500.105	Ballots.
1500.106	Referendum report.
1500.107	Confidential information.
1500.108	OMB control number.

#### Subpart B—Referendum Procedures

##### § 1500.100 General.

Agents will conduct a referendum in accordance with this subpart.

##### § 1500.101 Definitions.

In addition to the definitions found in subpart A of this part, the following definitions apply:

<sup>6</sup> See the *Occupational Outlook Handbook* on the Bureau of Labor Statistics website, <https://www.bls.gov/ooh/>.

*Agent* means the individual or individuals the Secretary designates to conduct the referendum.

*Eligible manufacturer* means any person who is currently a manufacturer of concrete masonry units and has manufactured a concrete masonry unit within 180 days of the referendum period.

*Employer Identification Number* means the number generally issued to businesses by the U.S. Department of Treasury. An Employer Identification Number (EIN) is also known as a Federal Tax Identification Number and is used to identify a business entity. For more information on EINs and how to apply go to <https://www.irs.gov/businesses>.

*Lead Executive* means the individual or individuals the Secretary designates to oversee the conduct of the referendum.

*Referendum period* means the period of time, not less than 30 days, that the Secretary or his agent determines appropriate for conducting the referendum.

*Registration* means the form and process eligible manufacturers who wish to vote must complete and follow in order to vote. Voters must register by midnight of the day prior to the beginning of the referendum period.

#### **§ 1500.102 Voting.**

(a) Each eligible manufacturer shall be entitled to cast one vote.

(b) The order shall become effective only if the Secretary determines that the order has been approved by a majority of manufacturers voting who also represent a majority of the machine cavities in operation of those manufacturers voting in the referendum.

(c) In order to vote, a manufacturer must register by midnight of the day prior to the start of the referendum period.

(d) For referendum purposes the Department will use Employer Identification Numbers (EIN) to identify unique manufacturers.

(e) The Secretary does not authorize proxy voting. However, an officer or employee of an eligible manufacturer, an administrator, executor, or trustee of an eligible entity may cast a ballot on behalf of such entity provided that such individual so voting shall certify that such individual is an officer or employee of the eligible entity, or an administrator, executor, or trustee of an eligible entity and that such individual has the authority to take such action. Upon request of an agent, the individual shall submit adequate evidence of such authority.

(f) Voters are to cast ballots by the means specified by the Secretary.

(g) If the Department requests, manufacturers shall provide proof of sales, proof of cavities in operation, or any other such proof the Department deems necessary to establish voting eligibility. Failure to provide the requested proof to the Department will result in ineligibility to participate in the referendum.

#### **§ 1500.103 Instructions.**

The agent(s) shall conduct the referendum, in the manner provided in this subpart, under the supervision of the Secretary. The Secretary may prescribe additional instructions, consistent with the provisions of this subpart, to govern the procedure to be followed by the agent(s). Such agent(s) shall:

(a) Determine the period during which voters may cast ballots;

(b) Provide notification to allow interested voters to register in advance of the referendum period. The Department will restrict the information requested to that information needed to ensure eligibility of request or to participate in the referendum. Types of information will include name, contact information (address, phone number, email), status as a manufacturer of concrete masonry units, affirmation of having manufactured concrete masonry units within 180 days prior to the beginning of the referendum period, the number of cavities in operation, their Employer Identification Number, and similar identifying information;

(c) Provide ballots and related material to voters for use in the referendum. The ballot shall provide for recording essential information, including information needed for ascertaining whether the person voting, or on whose behalf the vote is cast, is an eligible voter. The Department will restrict the information requested to that information needed to determine a voter's eligibility. Information will include the name and address of the manufacturer, status as a manufacturer of concrete masonry units, affirmation that they have manufactured concrete masonry units within 180 days of the beginning of the referendum period, manufacturer Employer Identification Number, the number of cavities the manufacturer has in operation, and similar verification information;

(d) Give reasonable public notice of the referendum:

(1) By using available media or public information sources, without incurring advertising expense, to publicize the dates, method of voting, eligibility requirements, and other pertinent

information. Such sources of publicity may include, but are not limited to webinars and other such media vehicles; and

(2) By such other means as the agent may deem advisable;

(e) Send to eligible manufacturers whose names and addresses are known to the agent, the instructions on voting, a ballot, and a summary of the terms and conditions of the proposed order. Agents will not refuse a ballot to any person who claims to be eligible to vote;

(f) At the end of the referendum period, collect, open, number, and review the ballots and tabulate the results in the presence of the Lead Executive authorized to monitor the referendum process;

(g) Prepare a report on the referendum; and

(h) Announce the results to the public.

#### **§ 1500.104 Agents.**

The Secretary may appoint agent(s) to conduct the referendum. Agent(s) may appoint any individual or individuals necessary or desirable to assist the agent in performing such agent's functions under this subpart. The agent authorizes each individual so appointed to perform any or all of the functions which, in the absence of such appointment, shall be performed by the agent.

#### **§ 1500.105 Ballots.**

The agent(s) shall accept all ballots cast. However, if an agent determines a need for additional review for any reason, the agent shall endorse above the voter's signature on the ballot with a statement to the effect that the ballot needs additional scrutiny. The agent will attach to the ballot information regarding the reasons for additional review, the results of any investigations made with respect to the review, and the final disposition of the review. Agents will not count ballots found to be invalid on the basis that:

(a) The ballot is blank, missing a vote, has no signature;

(b) Both voting boxes are marked in the vote section;

(c) The ballot is in a state that agents cannot determine the vote; or

(d) The ballot has a name that is different on the ballot from that of the registered voter. (However, agents will accept power of attorney votes with proper documentation.)

#### **§ 1500.106 Referendum report.**

Unless otherwise directed, the Lead Executive shall prepare and submit to the Secretary a report on the results of the referendum, the manner in which the agent(s) conducted the referendum,

the kind of public notice given, and other information the Lead Executive finds pertinent to the analysis of the referendum and its results.

#### **§ 1500.107 Confidential information.**

The ballots and other information or reports that reveal, or tend to reveal, the vote of any person covered under the order and the voter list shall be strictly confidential and shall not be disclosed.

#### **§ 1500.108 OMB control number.**

The control number assigned to the information collection requirement in this subpart by the Office of Management and Budget pursuant to the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.*, is OMB control number xxxx.

Dated: September 4, 2020.

**Kenneth White,**

*Senior Policy Analyst, Under Secretary for Economic Affairs.*

[FR Doc. 2020–20035 Filed 10–14–20; 8:45 am]

**BILLING CODE 3510–20–P**

## **LIBRARY OF CONGRESS**

### **U.S. Copyright Office**

#### **37 CFR Part 201**

[Docket No. 2020–11]

#### **Exemptions To Permit Circumvention of Access Controls on Copyrighted Works**

**AGENCY:** U.S. Copyright Office, Library of Congress.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The United States Copyright Office is conducting the eighth triennial rulemaking proceeding under the Digital Millennium Copyright Act (“DMCA”), concerning possible temporary exemptions to the DMCA’s prohibition against circumvention of technological measures that control access to copyrighted works. In this proceeding, the Copyright Office is considering petitions for the renewal of exemptions that were granted during the seventh triennial rulemaking along with petitions for new exemptions to engage in activities not currently permitted by existing exemptions. On June 22, 2020, the Office published a notification of inquiry requesting petitions to renew existing exemptions and comments in response to those petitions, as well as petitions for new exemptions. Having carefully considered the comments received in response to that notification, in this notice of proposed rulemaking (“NPRM”), the Office announces its intention to recommend each of the

existing exemptions for re adoption. This NPRM also initiates three rounds of public comment on the newly-proposed exemptions. Interested parties are invited to make full legal and evidentiary submissions in support of or in opposition to the proposed exemptions, in accordance with the requirements set forth below.

**DATES:** Initial written comments (including documentary evidence) and multimedia evidence from proponents and other members of the public who support the adoption of a proposed exemption, as well as parties that neither support nor oppose an exemption but seek to share pertinent information about a proposal, are due December 14, 2020. Written response comments (including documentary evidence) and multimedia evidence from those who oppose the adoption of a proposed exemption are due February 9, 2021. Written reply comments from supporters of particular proposals and parties that neither support nor oppose a proposal are due March 10, 2021. Commenting parties should be aware that rather than reserving time for potential extensions of time to file comments, the Office has already established what it believes to be the most generous possible deadlines consistent with the goal of concluding the triennial proceeding in a timely fashion.

**ADDRESSES:** The Copyright Office is using the *regulations.gov* system for the submission and posting of comments in this proceeding. All comments are therefore to be submitted electronically through *regulations.gov*. The Office is accepting two types of comments. First, commenters who wish briefly to express general support for or opposition to a proposed exemption may submit such comments electronically by typing into the comment field on *regulations.gov*. Second, commenters who wish to provide a fuller legal and evidentiary basis for their position may upload a Word or PDF document, but such longer submissions must be completed using the long-comment form provided on the Office’s website at <https://www.copyright.gov/1201/2021>. Specific instructions for submitting comments, including multimedia evidence that cannot be uploaded through *regulations.gov*, are also available on that web page. If a commenter cannot meet a particular submission requirement, please contact the Office using the contact information below for special instructions.

**FOR FURTHER INFORMATION CONTACT:** Regan A. Smith, General Counsel and Associate Register of Copyrights, by

email at [regans@copyright.gov](mailto:regans@copyright.gov), Kevin R. Amer, Deputy General Counsel, by email at [kamer@copyright.gov](mailto:kamer@copyright.gov), or Terry Hart, Assistant General Counsel, by email at [tehart@copyright.gov](mailto:tehart@copyright.gov). Each can be contacted by telephone by calling (202) 707–8350.

**SUPPLEMENTARY INFORMATION:** On June 22, 2020, the Office published a notification of inquiry requesting petitions to renew current exemptions, oppositions to the renewal petitions, and petitions for newly proposed exemptions in connection with the eighth triennial section 1201 rulemaking.<sup>1</sup> In response, the Office received thirty-two renewal petitions, eight comments in opposition to renewal of a current exemption, and seven comments supporting renewal of a current exemption.<sup>2</sup> These comments are discussed further below. In addition, the Office received twenty-six petitions for new exemptions or expansion of previously granted exemptions.

With this NPRM, the Office sets forth the exemptions that it intends to recommend for re adoption without the need for further development of the administrative record, and outlines the proposed classes for new exemptions for which the Office initiates three rounds of public comment.

#### **I. Standard for Evaluating Proposed Exemptions**

As the notification of inquiry explained, for a temporary exemption from the prohibition on circumvention to be granted through the triennial rulemaking, it must be established that “persons who are users of a copyrighted work are, or are likely to be in the succeeding 3-year period, adversely affected by the prohibition . . . in their ability to make noninfringing uses under [title 17] of a particular class of copyrighted works.”<sup>3</sup> To define an appropriate class of copyrighted works, the Office begins with the broad

<sup>1</sup> 85 FR 37399 (June 22, 2020).

<sup>2</sup> The comments received in response to the notification of inquiry are available at <https://www.regulations.gov/docketBrowser?rpp=25&so=DESC&sb=comment> [DueDate&po=0&dt=PS&D=COLC-2020-0010](https://www.copyright.gov/1201/2021/petitions/renewal/) and on the Copyright Office website. Renewal petitions are available at <https://www.copyright.gov/1201/2021/petitions/renewal/>, and petitions for new exemptions are available at <https://www.copyright.gov/1201/2021/petitions/proposed/>. References to renewal petitions and comments are by party name (abbreviated where appropriate) and a brief identification of the previously granted exemption, followed by either “Renewal Pet.,” “Supp.” (for comments supporting an exemption), or “Opp.” (for comments opposing an exemption). References to petitions for new exemptions are by party name (abbreviated where appropriate), the Office’s proposed class number, and “Pet.”

<sup>3</sup> 17 U.S.C. 1201(a)(1)(C).